TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 509

FIRST NATIONAL BANK OF COLUMBUS, OHIO,
APPELLANT,

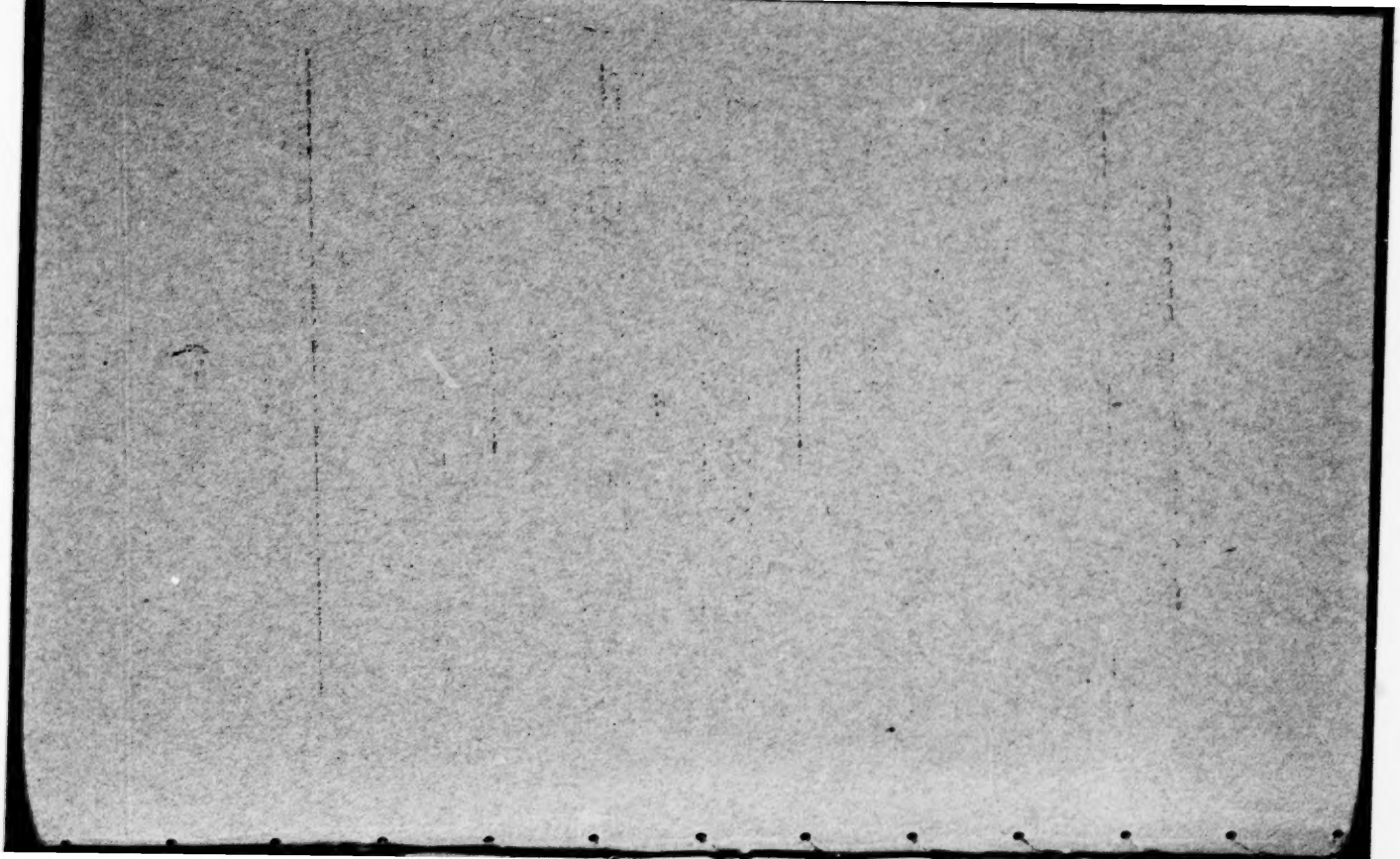
vs.

LOUISIANA HIGHWAY COMMISSION AND HOWELL MORGAN, TREASURER OF THE STATE OF LOUISIANA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA

FILED AUGUST 20, 1923

(29,819)



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INDEX

	Original	Print
Record from U. S. district court for the eastern district of Louisiana	1	1
Caption	1	1
Petition for writ of injunction	2	1
Temporary restraining order	8	6
Motion to dismiss	9	6
Joint and several answers of Louisiana Highway Commission and Howell Morgan	11	8
Affidavit of Nat W. Bond	20	16
Otto Katz	21	16
James M. Fourmy	22	17
James M. Fourmy	24	18

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	Original	Print
Affidavit of James M. Fourmy	25	18
W. T. Peterman	26	19
J. R. Wooten	28	21
C. F. Borah	30	23
Allen H. Johness	32	24
Howell Morgan	35	26
Opinion, Foster, J	37	27
Decree dismissing bill of complaint	40	29
Petition for appeal and order allowing same	41	29
Assignment of errors	42	30
Bond on appeal (omitted in printing)	43	30
Complainant's praecipe for transcript	44	30
Respondent's praecipe for transcript	45	31
Clerk's certificate	46	32

[fol. 1] UNITED STATES OF AMERICA:

DISTRICT COURT OF THE UNITED STATES, EASTERN DISTRICT OF LOUISIANA, BATON ROUGE DIVISION

(In Equity.) No. 117

FIRST NATIONAL BANK OF COLUMBUS, OHIO,

versus

LOUISIANA HIGHWAY COMMISSION et al.

Appearances: Nat W. Bond, Esq., and Messrs. McCloskey & Benedict, solicitors for First National Bank of Columbus, Ohio, complainant and appellant; George Seth Guion, Esq., and Paul A. Sompayrac, Esq., Asst. Attorneys General of Louisiana, solicitors for Howell Morgan, Treasurer of the State of Louisiana, respondent and appellee; W. M. Barrow & J. Y. Sanders, Jr., Attorneys for Louisiana Highway Commission, respondent and appellee.

Appeal from the District Court of the United States for the Eastern District of Louisiana, Baton Rouge Division, to the Supreme Court of the United States, Returnable Within Thirty Days from the 20th Day of July, 1923, at the City of Washington, D. C.

Transcript of Record

[fol. 2] [Title omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA, BATON ROUGE DIVISION

In Equity

[Title omitted]

PETITION FOR WRIT OF INJUNCTION—Filed June 30, 1923

To the Honorable Rufus E. Foster, Judge of the United States District Court for the Eastern District of Louisiana, Baton Rouge Division:

The petition of the First National Bank of Columbus, Ohio, a legal corporation organized under the banking laws of the United States of America, resident and domiciled in the City of Columbus, State of Ohio, and a citizen of said State, brings this, its bill of complaint against the Louisiana Highway Commission, a governmental corporation organized under and by virtue of the Constitution and laws of the State of Louisiana, and a citizen of said State, and resident and domiciled in the Eastern District thereof, in the City of Baton

Rouge, and against the Honorable Howell Morgan, Treasurer of the State of Louisiana, resident and domiciled in the said Eastern District thereof in the City of Baton Rouge, and a citizen thereof, and thereupon the petitioners complain and show:

I

Petitioner is a holder of real property and a taxpayer of the Parish of Jefferson, in this State, and within the Eastern District thereof, within the jurisdiction of this Honorable Court.

II

On the 7th day of April, 1919, Seven Hundred Thousand Dollars, ($700,000.00) of "Chef Menteur and Hammond-New Orleans State Highway bonds" were issued and sold by the Board of Liquidation of the State Debt of the State of Louisiana, under and by virtue of the provisions of Act No. 18 of the Extra Session of 1918 of the State of Louisiana, and which Act was, at an election by the people of this State, held November 5th, 1918, ratified and adopted as an amendment to the Constitution of this State, the whole of which will more [fol. 3] fully appear by reference to said Act and said Constitution, which are hereby referred to the same as if specially recited at length herein.

III

The purpose of Act No. 18 of the Special Session of 1918 was to authorize the issuance and sale of said bonds to provide funds for the construction of certain highways in this State known as the Chef Menteur Road and the Hammond-New Orleans Highway-, which latter highway is to extend under the law before set forth from the Town of Hammond in Tangipahoa Parish to the City of New Orleans approximately paralleling the Illinois Central Railroad through the Parishes of Tangipahoa, St. John the Baptist, St. Charles, Jefferson and to the line of Orleans Parish, and is and was in nowise ever intended to be diverted at or near the town of Frenier in St. John the Baptist Parish as hereinafter set forth.

IV

Subsequently to said Act No. 18 of the Extra Session of 1918, the Highway Department of the Board of State Engineers had approved and fixed the location as contemplated by said Act, which as aforesaid stated contemplated the construction of said Highway from Hammond to the Orleans Parish Line approximately paralleling the Illinois Central Railroad along the shores of Lake Pon-chartrain, the whole of which will more fully appear by reference to the resolution of said Board of State Engineers dated February 14th, 1919, and the signed plans thereof identified with said resolution, which resolution and plans are hereto annexed and made parts of this petition; and petitioner specially avers that predicated upon the location so

fixed by law and the governing authorities, which resolution and plans were referred to and adopted by the Board of Liquidation of the State Debt of the State of Louisiana and the said Board of Liquidation of the State Debt of the State of Louisiana did in pursuance thereof advertise, and on April 7th, 1919, sell at public sale the aforesaid bonds based thereon.

V

The proceeds of the sale of said bonds were by said Act and Constitutional Amendment irrevocably dedicated to the construction and completion of said highways as designated therein, and the said Board of Liquidation of the State Debt of the State of Louisiana did [fol. 4] on February 5th, 1920, set aside out of the proceeds of the sale of said bonds the sum of Three hundred and forty thousand ($340,000.00) Dollars for the construction and completion of the Hammond-New Orleans Highway, which fund is now on deposit with the Hibernia Bank and Trust Company, a banking corporation of the Parish of Orleans, as will more fully appear on trial and by the certified copy of the minutes of said Board annexed to and made part hereof.

VI

The designation of said route from Hammond to New Orleans was again ratified, confirmed and perpetuated by the provisions of Act No. 95 of the Extra Session of 1921, to which special reference is made the same as if incorporated at length herein, the said Hammon-New Orleans route being described therein as Route No. 33 of Section Seven thereof, and which route reads as follows:

Route 33.—Beginning at S. Carrollton Avenue and the New Basin Canal, New Orleans, both sides of New Basin Canal as far as the Cemeteries, thence on the west side of the New Basin Canal to West End, thence along the shore of Lake Pon-chartrain through La Branche, Ruddock, Strader, Ponchatoula, Hammond, Amite, Kentwood to a point on the Mississippi State Line."

Notwithstanding the provisions of said Act No. 18 of the Extra Session of 1918, of said Constitutional Amendment and of the provisions of Act No. 95 of the Extra Session of 1921, the Louisiana Highway Commission, with the approval of the Board of Liquidation of the State Debt of the State of Louisiana, advertised and subsequently thereunder pretended to let contracts for the partial construction of a portion of the said New Orleans-Hammond Highway on a route different from that prescribed by law and as heretofore fixed by the governing authorities and at a sum in excess of the amount so set aside and dedicated for the construction and completion of said entire highway, in this: that said contract so illegally let to McWilliams Company, Incorporated of Memphis, Tennessee, (a copy whereof, together with the plans identified therewith, is annexed hereto and made part hereof) provides that the said Ham-

mond-New Orleans Highway be constructed only to a point approximately one mile westward of and opposite to the town of Frenier on the Illinois Central Railroad, from thence the Louisiana Highway Commission proposes to construct a highway from said point west of Frenier to Ory in the Parish of St. John the Baptist, connecting up said Hammond-Frenier Highway (known as Project 127, Sections "A" and "B") with the Jefferson Highway, thus complet-
[fol. 5] ing a highway between Hammond and New Orleans in direct violation of said law, which provides for the construction of a highway from Hammond to New Orleans approximately parallel to the Illinois Central Railroad and along the shores of Lake Pon-chartrain.

VIII

In order to provide funds for the payment of said contracts with McWilliams Company, Incorporated, the Board of Liquidation of the State Debt of the State of Louisiana, did by resolution adopted February 23rd, 1923, set aside and dedicate out of the proceeds of the bond issue of Seven Hundred Thousand Dollars, constituting the State Highway Fund No. 2, Chef Menteur and Hammond-New Orleans State Highways, the sum of One hundred and fifty thousand, nine hundred and thirty-seven and 86/100 ($150,937.86) Dollars to defray fifty per cent of the estimated cost of the partial construction of Section "B" Project 127, and the sum of One hundred and thirty-seven thousand and four hundred and eight-six and 84/100 ($137,486.84) Dollars to defray fifty per cent of the estimated cost of the partial construction of Section "A", Project 127 and petitioner avers that it is the purpose and intention of the Louisiana Highway Commission to warrant on the State Treasurer for the payments of the work so illegally awarded to said McWilliams Company, Incorporated, out of the State Highway Fund No. 2 Chef Menteur and Hammond-New Orleans State Highways, and the said Louisiana Highway Commission, its vice-principals, agents and employees should be enjoined from issuing said warrants and State Treasurer from honoring same until the further orders of this Honorable Court.

IX

Petitioner avers that it is the intention of the Louisiana Highway Commission to forever abandon the construction of the roadway prescribed by law and the abandonment of which and the diversion and exhaustion of the State Highway Fund No. 2, Chef Menteur and Hammond-New Orleans State Highways will cause irreparable injury to your petitioner, impair the contractual obligation with the bondholders, violate his rights as a citizen, property holder and tax payer and for all of which he is remediless in the premises save by application to this Honorable Court to issue its equitable writ of injunction as hereinabove set forth, and which said injury would amount to more than Three Thousand ($3,000.00) Dollars, and would be irreparable;

[fol. 6]

X

Your petitioner avers that this suit is a suit between citizens of different States; that the amount involved exceeds the sum of Three Thousand Dollars ($3,000.00), exclusive of interest and costs; and that this suit is one to restrain the illegal diversion of funds dedicated to the improvement of real property within this District, and petitioners avers that they have no adequate relief at law, and the relief to which they are entitled can be granted only by a Court of equity.

In consideration whereof, and for as much as your petitioners have no adequate remedy at law and can have relief only in equity, where matters of this kind are properly cognizable and relievable, your petitioner prays the premises and the annexed affidavit considered, that upon executing bond in the amount and conditioned as the law directs, that a restraining order do issue herein, and that defendants do show cause on a day to be fixed why an injunction pendente lite should not issue, and in due course, that a writ of injunction issue herein directed to the Louisiana Highway Commission, its vice-principal, agents and employees and to the Honorable Howell Morgan, State Treasurer, enjoining them and each of them from issuing any warrants or honoring same in payment, in whole or in part, of said contracts with McWilliams Company, Incorporated of Memphis, Tennessee, for the construction of Sections "A" and "B", Project 127 of the Hammond-New Orleans Highway out of the State Highway Fund No. 2 Chef Menteur and Hammond-New Orleans State Highways, or any other contract not let strictly in accordance with the provisions of Act No. 18 of the Extra Session of 1918, and the Constitutional Amendment carrying same into effect, or in violation of Act No. 95 of the Extra Session of 1921 that the said defendants, the Louisiana Highway Commissions and the Honorable Howell Morgan, State Treasurer may be required to make answer respectively for all and singular the matters hereinbefore stated and charged, but not under oath, answers under oath being expressly waived, and that a writ of subpœna to said defendants do issue and that in due course there may be judgment in favor of petitioner and against said defendants, perpetuating said injunction, and petitioner prays for all general and equitable relief.

(Signed) Nat W. Bond, McCloskey & Benedict, Attys.

STATE OF LOUISIANA,
Parish of Orleans:

[fol. 7] Before me the undersigned authority personally came and appeared: Nat W. Bond, who being duly sworn, deposes and says:

That he is one of the attorneys for the First National Bank of Columbus, Ohio, petitioner herein, all the officers of which reside out of and are absent from the State of Louisiana; that all the facts and allegations contained in the foregoing petition, are true of his own knowledge, and those of which he has information and belief,

he believes to be true, and that a writ of injunction is necessary to protect the rights of petitioner in the premises.

(Signed) Nat. W. Bond.

Sworn to and subscribed before me this 29th day of June, 1923. (Signed) Percy S. Benedict, Not. Pub. (Seal.)

[fol. 8] U. S. District Court, Eastern Dist. of La., Baton Rouge Division

No. 117

[Title omitted]

Temporary Restraining Order

On reading and considering the verified bill of complaint herein, and considering that plaintiff is entitled to the relief prayed for, it is ordered that the defendants, the Louisiana Highway Commission, its members, agents and employees, and the Honorable Howard Morgan, state treasurer of Louisiana, be restrained and enjoined from issuing any warrants, or honoring same in payment in whole or in part out of the State Highway fund No. 2, Chef Menteur and Hammond-New Orleans state Highways, now deposited in the Hibernia Bank & Trust Company of New Orleans, until the further orders of this Court upon plaintiff giving bond in the sum of $1,000.00, and it is further ordered that defendants do show cause on Friday, July 6th, 1923, at 10 o'clock A. M., why a preliminary injunction should not issue herein.

(Signed) Rufus E. Foster, Judge. June 29, 1923. 4-30 P. M.

[fol. 9] In the United States District Court, Eastern District of Louisiana, Baton Rouge Division

[Title omitted]

Motion to Dismiss Bill—Filed July 6th, 1923

Now come the Louisiana Highway Commission and Howell Morgan, treasurer of the State of Louisiana, defendants, and move the court to dismiss the bill of complaint herein upon the following grounds:

I

That the bill of complaint does not state facts sufficient to entitle the plaintiff to any relief, there being no equity stated in the bill.

II

That it appears upon the face of the bill of complaint by plaintiff's own showing, that it is not entitled to the relief prayed for by this complaint against the defendants nor to any relief.

III

That it appears upon the face of the complaint that plaintiff's supposed cause of action is barred by Section 27 of Act No. 95 of the special session of the Legislature of the State of Louisiana of 1921.

IV

That it appears on the face of the said bill of complaint that the causes of said complaint are stale and that so long a time has passed since the matters and things complained of have taken place that it will be contrary to equity and good conscience for this court to take cognizance thereof or to force any further answer thereto.

[fol. 10]

V

That it appears on the face of the said complaint that the same is uncertain in that it cannot be ascertained therefrom whether the plaintiff owns any land along or adjacent to or approximately parallel to the Illinois Central Railroad in the Parish of Jefferson, or any land that will be touched or intercepted by the so-called Hammond-New Orleans State Highway.

VI

That it is not shown from the averments of the said bill that the action of the State Highway Commission in proceeding to construct the Hammond-New Orleans Highway on a location approximately parallel to the Illinois Central Railroad is in contravention of any designated provision of the State or Federal Constitutions, but, on the contrary, it appears from the averments of the said bill of complaint, that the said Louisiana Highway Commission is proceeding according to law in the exercise of an administrative discretion.

VII

That the allegations in the said bill of complaint are not sufficient to show that there is any real denial of the right of plaintiff and there is no allegation of deprivation of the property as to complainant.

VIII

That it appears from the said bill of complaint that the suit is frivolous with no facts alleged sufficient to show or make it appear that any real substantial injury will result to plaintiff from the action

of the Louisiana Highway Commission in constructing the said Hammond-New Orleans State Highway in sections.

(Signed) George Seth Guion, Asst. Attorney General of the State of Louisiana, Attorney for Howell Morgan, Treasurer of the State of Louisiana. (Signed) W. M. Barrow, J. Y. Sanders, Jr., Attorneys for the Louisiana Highway Commission, defendants.

[fol. 11] In the United States District Court for the Eastern District of Louisiana, Baton Rouge Division

[Title omitted.]

Joint and Several Answers of the Louisiana Highway Commission and Howell Morgan, Treasurer of the State of Louisiana—Filed July 6, 1923.

The Joint and Several Answers of the Louisiana State Highway Commission and Howell Morgan, Treasurer of the State of Louisiana, Defendants, to the Bill of Complaint of the First National Bank of Columbus, Ohio, Filed Herein

Answering the bill of complaint of the First National Bank of Columbus, Ohio, the defendants, answering jointly and severally, say:

I

On information and belief, they admit that plaintiff is a citizen of the City of Columbus, State of Ohio, and they admit that defendants are citizens of the State of Louisiana, domiciled in and residents of the City of Baton Rouge, in the Eastern District of Louisiana.

II

They are unable, for lack of information and belief, to admit or deny that petitioner is a holder of real property and a tax payer of the Parish of Jefferson, in this State, and within the Eastern District thereof. For the purpose of the hearing on the Rule issued herein, to show cause on July 6, 1923, why an interlocutory injunction shall not be issued as prayed for, defendants admit that petitioner is a holder of real property and a tax payer of the Parish of Jefferson.

Defendants aver, however, that the general allegation that petitioner is a holder of real property in the Parish of Jefferson, without disclosing in its bill of complaint the specific location of said property or how or in what manner and to what extent it may be irreparably injured, does not set forth a cause for the intervention of equity.

III

Defendants admit that on the seventh day of April, 1919, Seven Hundred Thousand Dollars ($700,000) of "Chef Menteur and Ham-

[fol. 12] mond-New Orleans State Highway Bonds" were issued and sold by the Board of Liquidation of the State Debt of the State of Louisiana under and by virtue of the provisions of Act No. 18 of the Extra Session of the Legislature of 1918, which Act was, at an election of the people held November 5, 1918, ratified and adopted as an Amendment to the Constitution of this State, as appears in the said Act referred to in the bill of complaint, and hereby referred to and made a part hereof as fully as if written in full herein.

IV

In answer to the allegations of Paragraph No. 3 of the bill of complaint in reference to the purpose of Act No. 18 of the Special Session of the Legislature of the State of Louisiana of 1918, defendants say that the Act itself is the best evidence of its intent and purpose, and reference is hereby made thereto for full and complete information as to its meaning.

The Louisiana Highway Commission, defendant, denies, however, that the said Hammond-New Orleans State Highway is to extend, under the law before set forth, from the town of Hammond, in Tangipahoa Parish, to the City of New Orleans, approximately paralleling the Illinois Central Railroad through the parishes of Tangipahoa, St. John the Baptist, St. Charles, Jefferson and to the line of Orleans Parish.

Defendant, the Louisiana Highway Commission admits that the said Act in nowise intended the said highway to be diverted at or near the town of Frenier, in St. John the Baptist Parish, as set forth in the Bill of Complaint, and avers that it is not the intention of said Highway Commission to divert said highway at or near the town of Frenier, in St. John the Baptist Parish, as set forth in the bill of complaint, but on the contrary, it is the intention of the said Louisiana Highway Commission to construct and complete the said Hammond-New Orleans State Highway, insofar as funds available therefor may permit, upon a location found to be feasible and practicable and which will meet with the approval of the United States Bureau of Public Roads.

V

They deny that subsequent to said Act No. 18 of 1918 the Highway Department of the Board of State Engineers had approved and fixed the location as contemplated in said Act, which, as aforesaid, contemplated the construction of said highway from Hammond into New Orleans, approximately parallel to the Illinois Central Railroad along the shores of Lake Pontchartrain, the words "Orleans Parish Line," and "along the shores of Lake Pontchartrain" being added [fol. 13] by the petitioner and nowhere appearing in said Act No. 18 of the Extra Session of 1918.

They further deny that the plans of the Highway Department of the Board of State Engineers were adopted by the Board of Liquidation of the State Debt of the State of Louisiana and that the

sale of the bonds "for the construction and completion of a model state highway on such route as the Highway Department of the State of Louisiana has designated or may deem wise to designate, to extend approximately parallel to the Illinois Central Railroad, from Hammond into New Orleans, and in the construction of the necessary bridges upon said highway;" was predicated upon the plans and specifications of the said Highway Department of the Board of State Engineers. On the contrary, defendants aver that the advertisement of the sale of the bonds for the construction of the said model highway to extend approximately parallel to the Illinois Central Railroad, from Hammond into New Orleans, was based and predicated upon the amendment to the Constitution of the State of Louisiana, as set forth in Act No. 18 of the Extra Session of the Legislature of Louisiana of 1918, ratified and adopted November 5, 1918.

VI

Defendants admit that the sale of the said bonds was by said Act No. 18 of 1918 and the Constitution of the State of Louisiana as amended thereby irrevocably dedicated to the construction and completion of said highways as designated therein, viz: The Chef Menteur and Hammond-New Orleans State Highways. They admit that the Board of Liquidation by Resolution of February 5, 1920, did set aside out of the proceeds of the sale of said bonds the sum of Three Hundred Forty Thousand Dollars ($340,000.00) for the construction and completion of the Hammond-New Orleans Highway, which fund is now on deposit with the Hibernia Bank and Trust Company, in the City of New Orleans.

They further say that petitioner made no objection to or protest against the action of the said Board of Liquidation of February 5, 1920, in setting aside the amount specified for the construction and completion of said Hammond-New Orleans Highway, and is estopped by its own laches from now complaining against the same.

VII

They deny that the location of the Hammond-New Orleans State Highway as designated in Act. No. 18 of the Special Session of 1918, hereinabove referred to, was ratified, confirmed or perpetuated by the provisions of Act No. 95 of the extra session of 1921, but defendants [fol. 14] admit that the provisions of act No. 18 of 1918, amending the Constitution of the State of Louisiana, set forth the conditions, requirements, etc., under which the Louisiana Highway Commission shall proceed in constructing the Hammond-New Orleans State Highway, and Act No. 95 of he Special Session of 1921 creating the Louisiana Highway Commission, especially provides that "the location and designated routing of state highways as herein made may be altered and amended by the Louisiana Highway Commission to such an extent and in such manner as may be necessary to meet any requirements that may be made by the Federal Government in granting aid in road construction."

The said Act No. 95 of 1921 further provides "that whenever the engineering difficulties or financial costs of construction in the opinion of the Commission, render the construction of any road inadvisable, it shall not undertake such work."

Section Eleven of the said Act No. 95 of 1921 specially provides "that nothing in this Act shall affect the bonds issued under Act No. 18 of the Special Session of the Legislature of 1918 for the building of the New Orleans-Chef Menteur and the New Orleans-Hammond highways, and said bonds thus issued, in principal and interest, shall be paid as provided in said Act, all in accordance with Sections Nos. 19, 20, 21, 22, 23, and 24 of the Constitution of the State of Louisiana of 1921, and especially the sixth paragraph of Section No. 22, and Sections Nos. 23 and 24 of the said Constitution.

VIII

Defendants deny that, notwithstanding the provisions of the said Act No. 18 of the Extra Session of 1918 amending the Constitution of the State of Louisiana and of the provisions of Act No. 95 of the Extra Session of 1921, the Louisiana Highway Commission, with the approval of the Board of Liquidation, of the State Debt of the State of Louisiana, advertised and subsequently thereunder proceeded to let contracts for the partial construction of a portion of the said Hammond-New Orleans highway on a route different from that prescribed by law and as heretofore fixed by the governing authorities and at a sum in excess of the amount so set aside and dedicated for the construction and completion of said entire highway.

Further answering paragraph seven of the bill of complaint, defendants aver that the advertisement for bids and the letting of contracts for the partial construction of a portion of the said Hammond-New Orleans State Highway was in strict accordance with Act No. 18 of the Special Session of 1918 amending the Constitution of the State of Louisiana and Act No. 95 of the Special Session of 1921.

[fol. 15] Defendants deny that the letting of the contracts to McWilliams Company, Incorporated, of Memphis, Tennessee, is in any manner illegal. They aver that the said contracts were let in strict accordance with law and cover the construction of the following sections of the Hammond-New Orleans Highway, viz:

"Section "A," Tangipohoa Parish.—From a point 1.6 miles south of Ponchatoula to Pass Manchac, 8.834 miles.

Section "B," St. John the Baptist Parish.—From Pass Manchac to Frenier, 13.173 miles.

The Louisiana Highway Commission, defendant, admits that it is its purpose to construct a highway from a point west of Frenier to Ory, in the Parish of St. John the Baptist, connecting up said Hammond-New Orleans Highway with the so-called Jefferson Highway, but deny that the construction of said highway between the point west of Frenier and Ory is in any manner in direct violation of law, but on the contrary, aver that the said highway is a part of the general highway system of the State of Louisiana as provided for in Act No. 95 of the Special Session of 1921. The Louisiana

Highway Commission, defendant, further avers that no part of said cost is to be paid out of "Special Highway Fund No. 2—Chef Menteur and Hammond-New Orleans State Highways."

IX

The defendants, on information and belief, admit that the Board of Liquidation of the State Debt of the State of Louisiana, did, by resolution adopted February 23, 1923, set aside and dedicate out of the proceeds of the said bond issue for the construction of the Chef Menteur and Hammond-New Orleans State Highways the sum of $150,937.86 to defray fifty per cent of the estimated cost of the partial construction of Section "B" of the Hammond-New Orleans Highway, as above set forth, and the sum of $137,486.84 to defray fifty per cent of the estimated cost of the partial construction of Section "A" of the Hammond-New Orleans Highway, as above set forth.

Defendants admit it is the intention of the said Louisiana Highway Commission to draw warrants on the State Treasurer for the payment of the contracts awarded to the said McWilliams Company, Incorporated, amounting to $288,424.70, out of the State Highway Fund No. 2—Chef Menteur and Hammond-New Orleans State highways—for the construction of Sections "A" and "B" of the said Hammond-New Orleans Highway from a point 1.6 miles south of Ponchatoula to Pass Manchac, a distance of 8.834 miles and from Pass Manchac to Frenier, a distance of 13.173 miles]a total distance of 22.007 miles.

[fol. 16]

X

The Louisiana Highway Commission, defendant, denies that it is its intention to forever abandon the construction of the Hammond-New Orleans State Highway as prescribed by Act No. 18 of the Special Session of 1918 and the Constitution of the State of Louisiana, or to divert and exhaust State Highway Fund No. 2—Chef Menteur and Hammond-New Orleans State Highways—in the construction of a portion of said highway. On the contrary, the defendant Louisiana Highway Commission avers that it has always assured parties interested in the construction of the Hammond-New Orleans State Highway that if the proposed levee were constructed from West End to La Branche and found to be feasible and practicable the Louisiana Highway Commission, with the approval of the United States Bureau of Public Roads, would make such additions to the land side of the levee as might be necessary and construct a roadway thereon.

The Louisiana Highway Commission, in further answer to Paragraph No. 9 of the Bill of Complaint, avers that it has not diverted and exhausted and does not intend to divert or exhaust the said "Highway Fund No. 2—Chef Menteur and Hammond-New Orleans State Highways," and that the construction of the sections now under contract from a point south of Ponchatoula to a point opposite Frenier will not exhaust the said funds.

Defendant further avers that not only has it not diverted or ex-

hausted the said Highway Fund No. 2—Chef Menteur and Hammon-New Orleans State Highways in constructing, completing, or in contracting for said sections "A" and "B" of the said highway, but on the contrary, has provided funds from the General Highway Fund, in addition to the said Special Highway Fund No. 2, for the construction and completion of the said sections "A" and "B."

XI

Defendant, the Louisiana Highway Commission, further answering, says that in January, 1921, bids were called for and received for the construction of a section of the said Hammond-New Orleans State Highway, 4.91 miles in length, extending 3.27 miles north of and 2.161 miles south of Ponchatoula, which was subsequently begun and completed. No objection to the construction of the said section of the said Hammond-New Orleans Highway was made by [fol. 17] petitioner, and petitioner is now estopped by its laches from complaining of the method adopted by said Louisiant Highway Commission for constructing and completing the said Hammond-New Orleans State Highway in sections along a route approximately parallel to the Illinois Central Railroad.

XII

Defendant, Louisiana Highway Commission, further says that the contractors, McWilliams Company, Incorporated, are now at work under the aforesaid contracts with the said Louisiana Highway Commission on Sections "A" and "B" of the said Hammond-New Orleans Highway and that payments for estimates of expenses will shortly be due and payable out of the said "Special Highway Fund No. 2—Chef Menteur and Hammond-New Orleans State Highways," in accordance with the said contracts.

XIII

Defendant, Louisiana Highway Commission, further answering, as reasons why the injunctions as herein prayed for should not be granted says that the building of said Sections "A" and "B" of said Hammond-New Orleans State Highway is essential to the construction and completion of the said Highway as provided for by Act No. 18 of the Special Session of 1918 and the Constitution of the State of Louisiana and will in no manner interfere with the construction and completion of the said Hammond-New Orleans State Highway approximately parallel to the Illinois Central Railroad from the end of the said sections now under construction, on such location as may be found feasible and practicable and approved by the Brureau of Public Roads.

XIV

Defendant, Howell Morgan, State Treasurer, further answering, says that he is merely the custodian of the said "Special Highway

Fund No. 2—Chef Menteur and Hammond-New Orleans State Highways," and is not in any manner charged with the duty of administering the highway laws of the State of Louisiana.

XVI

Defendant, Louisiana Highway Commission, further answering, says that the petitioner herein is seeking to control by injunction the administrative discretion of a State body created for the purpose of selecting, locating, constructing and maintaining highways in the State of Louisiana, and especially does the petitioner seek by injunction to prevent the said Louisiana Highway Commission, defendant, from carrying out the provisions of Act No. 18 of the Special Session of 1918 and of the Constitution of the State of Louisiana and of Act No. 95 of the Special Session of 1921, in con- [fol. 18] structing and completing with the least possible delay in the most feasible and practicable manner the Hammond-New Orleans State Highway, the entire responsibility for which rests upon the said Louisiana Highway Commission, defendant.

They further aver that the granting of a preliminary injunction or an injunction pendente lite will hamper and Stop the building of public works, interfere with the progress and development of the State, and especially the section traversed by the said Hammond-New Orleans State Highway, seriously inconvenience the citizens and residents, not only of the parishes through which said Hammond-New Orleans State Highway is to be constructed but also of other parishes adjacent thereto who desire to and will use said highway when completed, resulting in great public harm.

XVII

Further answering, defendants deny that their act in letting contracts for the partial completion of the said Hammond-New Orleans State Highway, part of the expense of which is to be paid out of Special Highway Fund No. 2—Chief Menteur and Hammond-New Orleans State Highways, will impair the contractual obligations with the bondholders, none of whom are complaining. They furthere deny that the petitioner has any vested right in the said contracts.

XVIII

Defendants deny that petitioner will be caused irreparable injury, that the contractual obligations with the bondholders will be impaired, that his rights as a citizen will be violated or that the injury in this suit will amount to more than Three Thousand Dollars ($3,000.00) and would be irreparable.

XIX

Defendants aver that the bill is totally without equity, does not set forth facts upon which the Court may form conclusions of its

own, totally mis-states the position of the Louisiana Highway Commission and is entirely based upon suppositions and opinions of the Petitioner.

Wherefore, the defendants having answered as fully as they are advised they are required by law to answer, pray that the Rule to show cause why Preliminary injunction should not issue herein be recalled and vacated and that the application for a preliminary injunction be denied, that the bill of complaint be dismissed and for all general and equitable relief in the premises, and for all costs.

(Signed) George Seth Guion, Asst. Attorney General; Wm. Barrow, J. Y. Sanders, Jr., Attorneys for Defendants.

[fol.19] OATH OF WILSON T. PETERMAN

STATE OF LOUISIANA,
Parish of East Baton Rouge:

Before me, the undersigned authority, personally came and appeared Wilson T. Peterman, who being first duly sworn, deposes and says that he is Chairman of the Louisiana Highway Commission, that the facts set forth in the foregoing answer, insofar as they relate to the Louisiana Highway Commission, are true to the best of his knowledge, information and belief.

(Signed) Wilson T. Peterman.

Sworn to and subscribe before me this Fifth day of July, 1923, A. D. (Signed) J. Y. Sanders, Jr. My commission expires: At an indefinite date.

OATH OF HOWELL MORGAN

STATE OF LOUISIANA,
Parish of East Baton Rouge:

Before me, the undersigned authority, personally came and appeared Howell Morgan, who being first duly sworn, deposes and says that he is Treasurer of the State of Louisiana, and is custodian of the State funds, that he has made the foregoing answer, insofar as it relates to him or his office, is true and correct to the best of his knowledge, information and belief.

(Signed) Howell Morgan.

Sworn to and subscribed before me this Fifth day of July, 1923 A. D. (Signed) J. Y. Sanders, Jr., Notary Public. My commission expires: At an indefinite date.

[fol. 20] U. S. District Court, Baton Rouge Div.

No. 117

[Title omitted]

Affidavit of Nat W. Bond—Filed July 6, 1923

Before me, the undersigned authority, personally came and appeared Nat W. Bond, who after being first duly sworn, deposes and says:

That he is a resident of the Parish of Orleans State of Louisiana; that he is the attorney of record of the First National Bank of Columbus, Ohio, petitioner herein, all of whose officers reside out of and are absent from the State of Louisiana; that it is to affiant's personal knowledge that the location of the Hammond-New Orleans Highway according to law will enhance the property of affiant's principals in the sum of more than Five thousand dollars; and that the exhaustion of the fund referred to in the bill of complaint filed by petitioner for the partial construct- of said Hammond-New Orleans Highway, known as Sections "A" and "B," Project 127, which is only approximately one-half of the entire length of said Hammond-New Orleans Highway, will damage your affiant's principals in a sum exceeding five thousand dollars.

(Signed) Nat W. Bond.

Sworn to and subscribed before me this 6th day of July, 1923. (Signed) Percy S. Benedict, Not. Pub.

[fol. 21] United States District Court, Baton Rouge Division

No. 117

[Title omitted]

Affidavit of Otto Katz—Filed July 6, 1923

Before me, the undersigned authority, personally came and appeared, Otto Katz, a resident of the Parish of Jefferson and a citizen *on* the State of Louisiana, who, after being first duly sworn, deposes and says:

That the First National Bank of Columbus, Ohio is the owner of fourteen hundred acres of land situated in the Parish of Jefferson, State of Louisiana, and in the Fourth Drainage District of said Parish; that the drainage tax for said district is $3.50 per acre, per year, in addition to all other State, Parish and other sub-division taxes.

(Signed) Otto Katz.

Sworn to and subscribed before me this 6th day of July, 1923. (Signed) Percy S. Benedict, Not. Pub.

[fol. 22] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF JAMES M. FOURMY—Filed July 6, 1923

STATE OF LOUISIANA,
Parish of East Baton Rouge:

Before me, the undersigned authority, personally came and appeared James M. Fourmy, who being first duly sworn, upon his oath deposes and says that he is the State Highway Engineer of the Louisiana Highway Commission and that he has held that position continuously since January 15, 1922;

That several conferences were held by Mr. W. T. Peterman, Chairman of the Louisiana Highway Commission, and affiant, as representatives of the Louisiana Highway Commission, and Mr. Allen H. Johness, Chairman of the Fourth Jefferson Drainage District, Mr. A. T. Dusenberry, Engineer of the Fourth Jefferson Drainage District, Mr. O. H. Katz, President of the Fourth Jefferson Drainage District, and Jurge C. F. Borah, representing a majority of the land interests along the lake shore, for the purpose of arriving at a basis upon which the highway could be constructed along the lake shore between West End and La Branche;

That at the said conferences the said representatives of the lake shore land interests stated that in order to effect reclamation of the lake shore properties a levee of certain specific dimensions and certain methods of construction would be necessary and this levee they proposed to build from West End to the St. Charles Parish line, and maintain the same as required by law. The aforesaid representatives of the Louisiana Highway Commission assured them that if the proposed levee were constructed from West End to La Branche and found to be feasible and practicable, the Louisiana Highway Commission, with the approval of the United States Bureau of Public Roads, would make such additions to the land side of the levee as might be necessary and construct a roadway thereon.

[fol. 23] That it is not the intention of the Louisiana Highway Commission to forever abandon the construction of the said roadway along the lake shore.

(Signed) James M. Fourmy.

Sworn to and subscribed before me this 5th day of July, 1923, A. D. (Signed) J. Y. Sanders, Jr., Notary Public. (Seal.) (My commission expires: Indefinitely.)

[fol. 24] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF J. M. FOURMY—Filed July 6, 1923

STATE OF LOUISIANA,
Parish of East Baton Rouge:

Before me, the undersigned authority, personally came and ap
peared James M. Fourmy, who being first duly sworn, upon his oat
deposes and says that he is the State Highway Engineer of th
Louisiana Highway Commission and that he has held that positio
continuously since January 15, 1922;

That he caused to be outlined the present location of the roadwa
from Ponchatoula to a point opposite Frenier; that the locatio
of the said road is as designated upon the map attached to this aff
davit as exhibit "A";

That the position of the roadway covered by the existing contra
from Ponchatoula to a point opposite Frenier parallels the Illinoi
Central Railroad, and from a point just north of Ruddock to a poin
opposite Frenier the location of the roadway is approximately one
half to three-quarters of a mile distant from the Illinois Centra
Railroad but approximately parallel thereto. This location was se
lected in order to take advantage of a wooded area which woul
afford protection to the amendment against storm damage;

That insofar as the roadway from a point opposite Frenier to Or
is concerned, the Louisiana Highway Commission intends to con
struct a connecting link between said points, irrespective of wha
route may be followed from the end of the road opposite Frenie
into the City of New Orleans, in order to afford a connecting lin
between the Jefferson Highway and the Hammond-New Orlean
Highway, and that the construction of the road between Ory and
point opposite Frenier is not to be paid for out of State Highway
Fund No. 2—Chef Menteur-Hammond New Orleans Highways.

(Signed) J. M. Fourmy

Sworn to and subscribed before me this Fifth day of July
1923, A. D. (Signed) J. Y. Sanders, Jr., Notary Public
(Seal.) My commission expires at an indefinite date.)

[fol. 25] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF JAMES M. FOURMY—Filed July 6, 1923

STATE OF LOUISIANA,
Parish of East Baton Rouge:

Before me, the undersigned authority, personally came and ap
peared James M. Fourmy, who being first duly sworn, deposes and
says that he is the State Highway Engineer of the Louisiana High

way Commission and that he has held that position continuously since January 15, 1922;

That he has charge of the location, construction and maintenance of all highways in the State of Louisiana;

That very complete surveys were made of various routes leading from Ponchatoula into New Orleans and a report of the same was made to the Louisiana Highway Commission under date of February 23, 1923, a copy of which is attached to this affidavit, the same having been personally prepared by affiant who hereby says that the facts therein contained were obtained from field surveys, investigations and studies made by himself in connection with his assistants, and that the facts therein contained are true to the best of his knowledge and belief.

That while several routes are shown in the said report, hereto attached and made a part of this affidavit, in each and every instance and in connection with each and every one of the routes therein contained the line of survey is the same from Ponchatoula to a point opposite Frenier, and is approximately parallel to the Illinois Central Railroad, and that the lines beyond the point opposite Frenier leading into New Orleans vary as indicated upon the map contained in said report.

(Signed) James M. Fourmy.

Sworn to and subscribed before me this 5th day of July, 1923. A. D. (Signed) J. Y. Sanders, Jr., Notary Public (Seal.) (My commission expires: Indefinitely.)

[fol. 26] IN THE UNITED STATES DISTRICT COURT

AFFIDAVIT OF W. T. PETERMAN—Filed July 6, 1923

STATE OF LOUISIANA,
Parish of East Baton Rouge:

Before me, the undersigned authority, personally came and appeared Wilson T. Peterman, who, being first duly sworn, on his oath, deposes and says:

That is is Chairman of the Louisiana Highway Commission, having offices in the Reymond Building, Baton Rouge, Louisiana. That said Highway Commission is charged with the duty of administering the highway acts of this State, and such duties include the location, construction, and maintenance of state highways.

That several conferences were held with representatives of land holders along the lake shore of Lake Pontchartrain, at which Allen H. Johnson, Chairman of the Fourth Jefferson Drainage District, A. T. Dusenberry, Engineer of said drainage district, O. H. Katz, President of said drainage district, Judge C. F. Borah, representing land interests along the lake shore, and both the said Peterman and James M. Fourmy, State Highway engineer, were present:

That these conferences were held for the purpose of arriving
basis upon which a highway could be feasibly and practically
structed along the lake shore; that at the said conferences said re
sentatives of the lake shore interests stated that in order to ef
reclamation of the lake shore properties, a levee of certain speci
dimensions and certain methods of construction would be ne
sary, and that they proposed to build such a levee from West
to the St. Charles Parish line, and maintain the same as requi
by law. That he, the said Chairman of the Louisiana Highw
Commission, and the said James M. Fourmy, Highway Engin
assured said representatives of the lake shore land interests tha
the proposed levee were built from West End to La Branch and fou
to be feasible and practicable the Louisiana Highway Commissi
with the approval of the United States Bureau of Public Roads, wo
make such additions to the land side of the said levee as might
necessary and construct a roadway thereon; That as the said hi
way known as Hammon-New Orleans State Highway No. — i
government aided highway, the approval of the United States Bur
of Public Roads must be obtained in order to secure governm
aid.

Affiant further says that it is not and never has been the int
tion of the Louisiana Highway Commission, or its members, to
ever abandon the construction of said Hammond-New Orleans St
Highway to the City of New Orleans; but, on the contrary, it
been, and is the intention of said Commission to construct and co
plete the said Hammond-New Orleans highway to New Orleans
a route that is feasible and practicable, and approved by the Bur
of Public Roads; that the lake shore route has not been fore
abandoned; that the Louisiana Highway Commission's position
as stated to the representatives of lake shore land interests as ab
set forth.

Affiant further says that it is not the intention of said Louisia
Highway Commission to construct a highway from a point oppos
Frenier to Ory as a part of said Hammond-New Orleans State Hig
way, but as a separate and distinct road project, none of which
pense will or can be paid out of the Special Highway Fund No.
—Chef Menteur and Hammond-New Orleans State Highways; t
said highway from Frenier to Ory will be constructed and complet
irrespective of what route may be finally selected as a continuati
of the Sections "A" and "B" of said Hammond-New Orleans St
Highway to New Orleans.

Affiant further says that the contracts let to McWilliams Compan
Incorporated, of Memphis, Tennessee, for partial construction of sa
Hammond-New Orleans Highway were let after duly advertisi
for bids, the said McWiliams Company being the lowest responsi
bidder; that the total amount of the two said contracts to be pa
said McWilliams Company, Incorporated, is the sum of Five Hu
dred Seventy-six Thousand Eight Hundred Forty-nine Dollars a
Forty cents (576,849.40); That of said total amount, only o
half, viz: the sum of Two Hundred Eighty-eight Thousand Fo
Hundred Twenty-four Dollars and Seventy Cents ($288,424,7

is to be paid out of Special Highway Fund No. 2—Chef Menteur and Hammond-New Orleans State Highways; That the balance of said total amount of said contracts will be paid out of funds other than Special Highway Fund No. 2—Chef Menteur and Hammond-[fol. 27] New Orleans State Highway; that the payment of the said amount out of the Special Highway Fund No. 2—Chef Menteur and Hammond-New Orleans State Highways—will not exhaust the said fund.

Affiant further says that it is the practice of the Louisiana Highway Commission, without exception, to let contracts for important state highways in sections; that it is necessary in many cases, and specially in the case of the Hammond-New Orleans Highway, to build the embankment and allow the same many months to solidify and settle, before said embankment is in condition for surfacing and gravelling, and that in following this practice in letting contracts for constructing the embankments of Section- "A" and "B" of said Hammond-New Orleans Highway the said Commission has acted in the best interest of economy and in accordance with recognized necessary rules of construction of highways in this state.

Affiant further says that Sections "A" and "B" of said Hammond-New Orleans State Highway are common to any route that has been discussed or may be selected and constructed from the end of same into the City of New Orleans, and that the said sections being an essential part of said Hammond-New Orleans Highway, must be constructed before any route between Hammond and New Orleans can be completed.

(Signed) Wilson T. Peterman.

Sworn to and subscribed before me in my office in Baton Rouge, La., on this Fifth day of July, A. D. 1923. (Signed) J. Y. Sanders, Jr., Notary Public. (Seal.) My Commission Expires at an indefinite date.

[fol. 28] In United States District Court

Affidavit of J. R. Wooten—Filed July 6, 1923

State of Louisiana,
Parish of East Baton Rouge:

Before me, the undersigned authority, personally came and appeared James R. Wooten, who, being first duly sworn, on his oath, deposes and says:

That he is a member of the Louisiana Highway Commission and Secretary thereof; that said Louisiana Highway Commission is charged with the duty of administering the highway acts of this state; that he is familiar with the circumstances surrounding the letting of the contracts under which portions of the Hammond-New Orleans Highway are now being constructed.

Affiant further says that it is not, and never has been the in-

tention of the Louisiana Highway Commission or its members to forever abandon the construction of said Hammond-New Orleans State Highway to the City of New Orleans, but on the contrary, that it has been, and is, the intention of the said Commission to construct and complete the said Hammond-New Orleans State Highway to New Orleans on a route that is feasible and practicable, and approved by the Federal Bureau of Public Roads; that the said Highway Commission is now doing everything that it can toward the construction of the said Hammond-New Orleans Highway that in the nature of things it is necessary to construct said highway by sections; that the lake shore route into New Orleans has not been forever abandoned; that it is not the intention of the said Louisana Highway Commission to construct a highway from a point opposite Frenier to Ory as a part of said Hammond-New Orleans State Highway, but as a separate and distinct road project, none of the expenses of which will, or can be, paid out of the Special Highway Fund No. 2—Chef Menteur and Hammond-New Orleans State Highways; that said highway from Frenier to Ory will be constructed and completed, irrespective of what route may be finally selected as a continuation of Section- "A" and "B" of said Hammond-New Orleans State Highway to New Orleans.

Affiant further says that the contracts let to McWilliams Company, Incorporated, of Memphis, Tennessee, for a partial construction of said Hammond-New Orleans Highway were let after duly advertising for bids, the said McWilliams Company being the lowest responsible bidder; that the total amount of the two said contracts to be paid said McWilliams Company, Incorporated, is the sum of Five Hundred Seventy-six Thousand Eight Hundred Forty-nine Dollars and Forty Cents ($576,849.40); That of said total amount, only one-half, viz: the sum of Two Hundred Eighty-eight Thousand Four Hundred Twenty-four Dollars and Seventy Cents ($288,424.70) is to be paid out of Special Highway Fund No. 2—Chef Menteur and Hammond-New Orleans State Highways; That the balance of said total amount of said contracts will be paid out of funds other than Special Highway Fund No. 2—Chef Menteur and Hammond-New Orleans State Highways; that the payment of the said amount out of the Special Highway Fund No. 2—Chef Menteur and Hammond-New Orleans State Highways—will not exhaust the said fund.

Affiant further says that it is the practice of the Louisiana Highway Commission, without exception, to let contracts for important state highways in sections; that it is necessary in many cases, and specially in the case of the Hammond-New Orleans, to build the embankment and allow the same many months to solidify and settle, before said embankment is in condition for surfacing and gravelling, and that in following this practice in letting contracts for constructing the embankments of Sections "A" and "B" of said Hammond-New Orleans Highway the said Commission has acted in the best interest of economy and in accordance with recognized necessary rules of construction of highways in this state.

Affiant further says that Sections "A" and "B" of said Hammond-

New Orleans State Highway are common to any route that has been discussed or may selected and constructed from the end of same into the City of New Orleans, and that the said sections being an essential part of said Hammond-New Orleans Highway, must be constructed before any route between Hammond and New Orleans can be completed.

(Signed) J. R. Wooten.

[fol. 29] Sworn to and subscribed before me in my office in Baton Rouge, La., on this fifth day of July, A. D. 1923. (Signed) J. Y. Sanders, Jr., Notary Public. (Seal.) My commission expires at an indefinite date.

[fol. 30] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF C. F. BORAH—Filed July 6, 1923

STATE OF LOUISIANA,
Parish of Orleans:

Before me, the undersigned authority, personally came and appeared Charles F. Borah, who, being by me first duly sworn, deposes and says:

That, some two months ago, he sat in conference on two different occasions, between Wilson T. Peterman, Chairman of the Louisiana Highway Commission, and Allen H. Johness, the last of said two conference being between these same parties and James M. Fourmy, State Highway Engineer, Allan T. Dusenbury, Engineer for the Fourth Jefferson Drainage District, and Otta Katz, President of said Fourth Jefferson Drainage District, said conferences being for the purpose of considering the locating of the New Orleans-Hammond Highway road along the lake shore front of Lake Pontchartrain; that at said conference, and especially the latter one, the statement was made on behalf of the principal land owners, represented by A. H. Johness and Otto Katz and A. T. Dusenbury, that the Fourth Jefferson Drainage District, through its engineer, was then preparing, and had practically ready for submission, a plan of reclamation of the lands within said Drainage District extending to the St. Charles Parish line by which it was proposed to drain said lands, and in doing so the outline of the levee that it was proposed to build along the lake shore front for the purpose of draining said lands was discussed by Mr. Fourmy and Mr. Dusenbury, Engineers respectively for the Highway Commission and the Drainage Board.

That at said meeting W. T. Peterman, as Chairman for the Commission, said that he favored putting the Hammond Highway road along the lake shore front if it could be demonstrated that it was practicable and feasible; that engineers had differed as to the practicability and feasibility of building the road on this soil, and that, if the levee was built as contemplated by the Drainage Board and

stood up, and showed that it would hold up, he, with the approva of the United States Bureau of Public Roads, which he felt satisfie [fol. 31] there would be no trouble in securing if it was demon strated that the levee would hold up, would make such additions t the land side of the levee as might be necessary, and construc thereon the aforesaid road.

That he was satisfied in his mind that there would be no obstacl in the way of placing the road there once it be determined that th levee would hold as Mr. Dusenbury felt sure it would if built in th manner which he had suggested.

Deponent further says that his understanding was, at the adjourn ment of said meeting, that it was understood by all parties that th work should proceed along the above lines, and, if the levee wa built, from West End to La Branche the road would be built; tha while it was suggested that a letter confirming this would be written by the Chairman of the Highway Commission, the agreement did not depend upon this letter being written, but all left satisfied that th Highway Commission was in good faith, and that the route along the lake shore front would be adopted and the road built if and when it was demonstrated the levee would hold up.

That at said two conferences there was never any opposition ex pressed by the Highway Commission to building the road along said lake front, but, on the contrary, they expressed a willingness and desire to place the road there if the necessary conditions were met.

That it was his opinion that all parties were in perfect good faith, and that the Chairman of the Highway Commission was sincere in his desire to build the road there once he could be assured that the levee would hold up so that the public's money would not be spent in a useless cause.

(Signed) C. F. Borah.

Sworn to & subscribed before me on this 6th day of July, 1923. (Signed) Henry G. Bloch, Notary Public. (Seal.)

[fol. 32] In United States District Court

Affidavit of Allen H. Johness—Filed July 6, 1923

State of Louisiana,
Parish of Orleans:

Before me, the undersigned authority, personally came and appeared Allen H. Johness, who, being duly sworn, says:

That he is a resident of the Parish of Orleans, Louisiana, formerly a resident of the Parish of Jefferson, in said State; that he is, and has been for sometime, the accredited representative of the principal land owners in the Parish of Jefferson fronting on the lake shore, and was also appointed at a mass meeting in the City of New Orleans as chairman to represent the interests of the City of New Orleans.

That he has taken an active part in all the meetings and conferences called in reference to the building and construction of the Orleans-Hammond Highway along the lake shore; that he has been interested in this work for a period of some seven years, his first effort being in the legislature to get the act of 1918 passed authorizing the building of the Hammond Highway road along the lake shore front.

That since the creation of the Highway Commission as now organized and created he has had many official and informal conferences with the Chairman of that Commission, W. T. Peterman, Esq., on various occasion; that, among the conferences, was one at a public meeting held at Baton Rouge, La., some six months ago; that at that meeting and all meetings held since it was agreed by Mr. Peterman, speaking for the Highway Commission, that the contract which was then contemplated to be let to build a part of this highway from Ponchatoula to Frenier was to be considered as the second link in the highway, and that he, speaking for himself and the Commission, and affiant was in favor of continuing the route from Frenier into New Orleans along the lake shore, realizing the advantages that would accrue to the City of New Orleans, surrounding parishes and the State at large, but inasmuch as the questions of [fol. 33] feasibility any practicability had been so seriously raised, he and affiant, wanted to be convinced that an embankment built at the lake shore would stand, and that the large sums of public monies spent in this venture would not be wasted.

That, at a conference some two months ago between W. T. Peterman, Chairman of the Louisiana Highway Commission, J. M. Fourmy, Engineer for said Commission, A. T. Dusenbury, Engineer for the Fourth Jefferson Drainage District, Otto Katz, President of the Fourth Jefferson Drainage District, A. R. Losh, representing the United States Bureau of Public Roads, C. F. Borah and affiant it was stated by the Fourth Jefferson Drainage District representatives that a plan of reclamation was then being completed for the draining and reclamation of the lands fronting upon the lake shore, and that in the plan of reclamation it would be necessary, and there would be built a levee along the lake shore front in the method and manner determined upon by A. T. Dusenbury, Engineer for the said Drainage District, the dimensions and the method of construction of which was discussed by the engineers present.

That at said time W. T. Peterman, for the Louisiana Highway Commission, agreed that, if this levee was built and a reasonable time allowed to determine whether or not it would hold up, and a like levee should be built through the Parish of St. Charles, that the Highway Commission would, on being satisfied that the levee so built would hold up, undertake the construction of its road along or upon said levee, and to do the work necessary and to make such enlargements of the embankment as it found advisable for the construction of said Highway.

That the meeting adjourned with the understanding that the work of reclaiming the lands and the building of the levee by the Fourth

Jefferson Drainage District would be proceeded with as fast as possible, and that when completed the Commission would undertake its part of the work after it had been demonstrated the levee would hold up.

[fol. 34] That affiant had perfect faith then, and now has faith in the Highway Commission, through its Chairman, W. T. Peterman, carrying out its part of the program and building the road along or upon said levee with the least possible delay after the feasibility has once been determined.

(Sgd.) Allen H. Johness.

Sworn to & subscribed before me on this 6th day of July, 1923. (Signed) Henry G. Bloch, Notary Public. [Seal of Henry G. Bloch, Notary Public, Parish of Orleans, La.]

[fol. 35] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF HOWELL MORGAN—July 6, 1923

STATE OF LOUISIANA,
Parish of Orleans:

Before me, the undersigned authority, personally came and appeared Howell Morgan, who, being by me first duly sworn, upon his oath deposes and says, that he is Treasurer of the State of Louisiana, and custodian of the state funds, and is personally familiar with the receipts and disbursements of all funds in his custody. That in accordance with Act No. 18 of the Special Session of 1918, amending the Constitution of the State of Louisiana he keeps a special account of "State Highway Fund No. 2, Chef Menteur and Hammond-New Orleans State Highway" into which account all receipts and expenditures belonging to such fund are charged. Attached hereto is a statement of said account as it stood on July 2nd, 1923, taken from books of affiant which correctly shows the balances on hand on that date. There is on hand a balance in said account, on deposit in the Hibernia Bank & Trust Company, New Orleans, the sum of Three Hundred Forty-one thousand, three hundred three dollars ($341,303.86) and eighty-six (86/100) cents, being the remainder from the proceeds of the sale of Seven Hundred Thousand ($700,000.00) dollars of Chef-Menteur New Orleans State Highway bonds, which is bearing interest at the rate of three per cent per annum. In addition to the above sum there is a balance on hand in the account carried as "State Highway Fund No. 2, Chef Menteur and Hammond-New Orleans bonds,—Interest and Redemption Account" of five Hundred twenty-two thousand and Eighty-nine ($522,089.10) Dollars and ten (10/100) cents. The latter amount is the proceeds from the automobile license fund paid annually into said fund by the Secretary of State from collections based upon 25 cents per horse power on all automobile licenses issued in the parishes of Tangipahoa,

St. Charles, St. John the Baptist, Jefferson, Orleans, and St. Tammany in accordance with the provisions of Act No. 18 of the Special Session of 1918, and the interest on said fund which is paid monthly by the Hibernia Bank & Trust Co. at the rate of 3% per annum on the average daily balances in said fund as computed from the State [fol. 36] Treasurer's books, and also including accrued interest on original sale of bonds, after having paid all bonds and coupons that have matured to this date, and that no part of this interest and redemption account has been paid out for any other purpose than the redemption of bonds and payment of interest, and that the total amount of Five Hundred twenty-two thousand, and Eighty-nine ($522,089.10) Dollars and ten (10/100) cents, is now held on the State Treasurer's books for the payment of said bonds and interest, and such other purposes as may be authorized by law, and that this amount is far in excess of the amount necessary and required by said Act 18 of the Extra Session of 1918, to be set aside for the payment of bonds and interest maturing in the current year and the next succeeding year, which will never exceed Sixty Thousand ($60,000.00) Dollars in one year. The said special fund derived from motor vehicle licenses is in addition to, and is kept separately from, the "State Highway Fund No. 2, Chief Menteur Hammond-New Orleans State Highways Fund" and is annually augmented by the receipts from the Secretary of State for motor vehicle licenses.

(Signed) Howell Morgan, Treasurer, State of Louisiana.

Sworn to and subscribed before me this 6th day of July, 1923, A. D. (Signed) R. H. Carter, U. S. Commissioner. (Seal.)

[fol. 37] UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF LOUISIANA, BATON ROUGE DIVISION

No. 117

[Title omitted]

OPINION—Filed July 10, 1923

In this case it appears that in 1919, $700,000 of bonds known as the Chef Menteur and Hammond-New Orleans State Highway bonds were issued and sold by the Board of Liquidation, State Debt of Louisiana, for the purpose of constructing two highways, and the proceeds were dedicated to the construction and completion of the said highways. Thereafter, through constitutional and legislative enactments, the Louisiana State Highway Commission was created and vested with the duty of building a complete system of hard surface roads in the State of Louisiana. The act creating the Highway Commission contemplated the building by that body of the highways provided for in the legislation authorizing the said bond issue.

Plaintiff contends that it is the intention of the Highway Commission to abandon the road provided for by law and to use the funds for the construction of another and different highway. This is denied by defendants and it is alleged that only a portion of the fund created by the sale of the said bonds is intended to be used and that to complete a certain section of the said highway.

However, it is unnecessary to consider the merits of the controversy. Jurisdiction is sought on the ground of diversity of citizenship, which is not disputed. Plaintiff avers that it is the owner of real [fol. 38] property and a taxpayer in the Parish of Jefferson, State of Louisiana, and that the amount in dispute, exclusive of interest and costs, exceeds the sum of $3,000. This is manifestly insufficient as no facts are alleged on which a decision could be based.

As supplementing the averments of the bill affidavits are filed tending to show that the plaintiff is the owner of 1,400 acres of land situated in the Parish of Jefferson, in the Fourth Drainage District of the said parish; that the work contemplated by the Highway Commission will exhaust the fund created by the sale of the bonds, and that failure to complete the road as originally projected will damage plaintiff in an amount exceeding $5,000.

It appears, however, that the fund for the liquidation of the bonds is not created by a tax on land but is derived from the allocation of a portion of the license tax on automobiles. Plaintiff does not pretend to have contributed anything to this fund.

The affidavit to the effect that plaintiff will be damaged by the failure to complete the road as originally intended is a mere expression of opinion and is too speculative and remote to form the basis of jurisdiction.

It may be conceded that any taxpayer may file suit pro bono publico in a state court to enjoin a contemplated illegal act by a public official or board, usually regardless of the amount of his individual interest shown, but such is not the case in the Federal courts which are of limited jurisdiction to be always strictly construed.

It is well settled that the amount of a bond issue, or a fund to be affected, or the general value of property involved in the case, is not [fol. 39] the measure of jurisdiction. It must be shown that the plaintiff will suffer pecuniary loss or damage to the jurisdictional amount; otherwise the Court is without jurisdiction. El Paso Water Co. vs. El Paso 152 U. S. 157; Calvin vs. Jacksonville 158 U. S. 456; Coffee vs. Oklahoma 177 U. S. 346; Lion Bonding & Surety Co. vs. Karatz, decided by the Supreme Court April 23, 1923; Orleans-Kenner Electric Railway Co. vs. Dunbar 218 Fed. 344; Wetzel vs. Empire Gas & Fuel Co. 264 Fed. 869. Plaintiff has shown no pecuniary interest in the outcome of the suit.

The bill will be dismissed without prejudice.

(Signed) Rufus E. Foster, Judge. July 10/23.

[fol. 40] UNITED STATES OF AMERICA:

DISTRICT COURT OF THE UNITED STATES, EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION

[Title omitted]

DECREE DISMISSING BILL OF COMPLAINT—Filed July 10th, 1923

This cause came on to be heard at a former day upon the application of the plaintiff for a preliminary injunction, and upon the motion of respondents to dismiss the bill of complaint herein, and after hearing the pleadings, exhibits, evidence and arguments of counsel, was submitted;

Whereupon and on consideration thereof and for the reasons assigned in the written opinion of the Court on file;

It is ordered, adjudged and decreed that the application for a preliminary injunction be denied and that the bill herein, be dismissed at plaintiff's costs without prejudice.

It is further ordered that the restraining order issued herein be and the same is hereby recalled.

(Signed) Rufus E. Foster, Judge. New Orleans, La., July 10th, 1923.

[fol. 41] UNITED STATES OF AMERICA:

DISTRICT COURT OF THE UNITED STATES, EASTERN DISTRICT OF LOUISIANA, BATON ROUGE DIVISION, SITTING AT NEW ORLEANS

[Title omitted]

PETITION FOR AND ORDER ALLOWING APPEAL—Filed July 20, 1923

The above named plaintiff, First National Bank of Columbus, Ohio, conceiving itself aggrieved by the order entered on July 10th, 1923 in the above entitled proceedings, doth hereby appeal from said order to the Supreme Court of the United States, and it prays that this, its appeal may be allowed and that a transcript of the records and proceedings and papers upon which said order was made and duly authenticated, may be sent to the Supreme Court of the United States; and it further prays that a supersedeas may be herein granted, staying all proceedings herein pending said appeal, dated this 20th day of July, 1923, by its attorneys.

(Signed) Nat W. Bond, McCloskey & Benedict.

ORDER

New Orleans, July 20, 1923.

And now to-wit: On this 20th day of July, 1923, it is ordered that the appeal be allowed as prayed for, upon plaintiff's executing bond, conditioned as the law directs, in the sum of One Hundred Dollars.

(Signed) Rufus E. Foster, Judge.

New Orleans, La., July 21, 1923.

Service accepted and citation waived with all rights reserved.
(Signed) W. M. Barrow, Attorney, Louisiana Highway Commission. Paul A. Sompayrac, Assistant Atty. General of Louisiana, for State Treasurer.

[fol. 42] UNITED STATES OF AMERICA:

DISTRICT COURT OF THE UNITED STATES, EASTERN DISTRICT OF LOUISIANA, BATON ROUGE DIVISION, SITTING AT NEW ORLEANS

[Title omitted]

ASSIGNMENT OF ERRORS—Filed July 20, 1923

The plaintiff herein having prayed for an appeal from the final decree of this Court to the Supreme Court of the United States, assigns for error:

That the Honorable District Court of the United States for the Eastern District of Louisiana, Baton Rouge Division erred in decreeing that said Court was without jurisdiction under the laws of the United States, and the jurisprudence interpreting said laws, to pass upon the matters and things set forth in the appeal therein filed.

(Signed) Nat W. Bond, McCloskey & Benedict, Attorneys for First National Bank of Columbus, Ohio, Plaintiff.

[fol. 43] BOND OF APPEAL—Filed July 21, 1923 [for $100; approved, Foster, J., and omitted in printing]

[fol. 44] UNITED STATES OF AMERICA:

DISTRICT COURT OF THE UNITED STATES, EASTERN DISTRICT OF LOUISIANA, BATON ROUGE DIVISION, SITTING AT NEW ORLEANS

[Title omitted]

COMPLAINANT'S PRÆCIPE FOR TRANSCRIPT—Filed July 20, 1923

To the Honorable the Clerk of the United States District Court, Eastern District of Louisiana, Baton Rouge Division, New Orleans.

DEAR SIR:

In the matter above entitled wherein an appeal has been granted to the plaintiff by the Honorable the Supreme Court of the United States, the following is the præcipe indicating the portions of the

record in said cause to be incorporated in the transcript of appeal, to-wit: Certified copies of

1. The bill of complaint herein filed, June 30, 1923.

2. Motion of Louisiana Highway Commission and Howell Morgan, State Treasurer to dismiss the appeal filed July 6th, 1923.

3. Affidavit of Nat W. Bond, filed July 6th, 1923.

4. Affidavit of Otto Katz, filed July 6, 1923.

5. Opinion of the Court filed July 10th, 1923.

6. Decree of the Court filed July 10th, 1923.

(Signed) Nat W. Bond, McCloskey & Benedict.

I, one of the counsel above named, hereby certify that I have this day served a true copy of the within præcipe on adverse counsel by depositing same prepaid in the United States mail.

(Signed) Percy S. Benedict.

[fol. 45] UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF LOUISIANA, BATON ROUGE DIVISION

[Title omitted]

PRÆCIPE OF APPELLEE FOR ADDITIONAL PARTS OF RECORD—Filed July 26, 1923

To the Honorable Clerk of the United States District Court for the Eastern District of Louisiana, Baton Rouge Division:

The Louisiana Highway Commission, appellee, hereby designates the following additional portions of the record, which it requests to be printed:

1. Answer of defendants to the bill of complaint.

2. Affidavit of James M. Fourmy.

3. Affidavit of James M. Fourmy.

4. Affidavit of James M. Fourmy.

5. Affidavit of W. T. Peterman.

6. Affidavit of J. R. Wooten.

7. Affidavit of Charles F. Borah.

8. Affidavit of Allen H. Johness.

9. Affidavit of Howell Morgan.

10. Appellant's præcipe and this præcipe.

(Signed) W. M. Barrow, J. Y. Sanders, Jr., George Guion, Asst. Atty. General, Attorneys for Appellee.

[fol. 46] IN UNITED STATES DISTRICT COURT

Clerk's Office

CLERK'S CERTIFICATE

I, Henry J. Carter, Clerk of the District Court of the United States for the Eastern District of Louisiana, do hereby certify that the foregoing 45 pages contain and form a full, true, complete and perfect transcript of the record, assignment of errors and all proceedings in the case entitled First National Bank of Columbus, Ohio versus Louisiana Highway Commission, et al., No. 117, in Equity, of the Docket of the Baton Rouge Division of this Court, said transcript being made in accordance with præcipes, copied therein.

Witness my hand and the seal of said court at the City of New Orleans, La., this 1st day of August, A. D., 1923.

H. J. Carter, Clerk [Seal of U. S. District Court for the Eastern Dist. of La., N. O. Div.]

Endorsed on cover: File No. 29,819. E. Louisiana D. C. U. S. Term No. 509. First National Bank of Columbus, Ohio, appellant, vs. Louisiana Highway Commission and Howell Morgan, treasurer of the State of Louisiana. Filed August 20th, 1923. File No. 29,819.